UNITED NATIONS

DEPARTMENT OF PUBLIC INFORMATION

NON-GOVERNMENTAL ORGANIZATIONS SECTION

DPI/NGO/SB/91/5

PROBLEMS AND CHALLENGES OF THE CONVENTION ON THE LAW OF THE SEA

(Not an official record or press release. This summary is made available to NGO representatives for their information and free dissemination.)

On 7 February, 1991, Mr. Jean Pierre Levy, Director and Deputy to the Special Representative of the Secretary-General for the Law of the Sea, briefed NGO representatives on the Convention on the Law of the Sea.

In December 1970 the United Nations General Assembly recognized that the world's oceans are "the common heritage of mankind," declaring that the sea-bed and ocean-floor lying beyond national jurisdiction should be reserved exclusively for peaceful purposes. In 1982 the United Nations Convention on the Law of the Sea sent a signal of the international community's concern with protecting the use and resources of the world's oceans. "The use of marine resources should be guided by prudence, supported by mutual co-operation and safeguarded by international law." Eight years ago this Convention was adopted, and later signed by 159 member states. It has been ratified by 45 states out of 60 needed for its entry into force.

NGOs can undoubtedly play a very important role in developing national and regional marine policies as well as lending support to the process of ratification, Mr. Levy said. He emphasized that the International Law of the Sea was totally predicated upon the peaceful uses of ocean-space and its resources. The 1982 Convention refers regularly to co-operation among states for the oceans' peaceful uses and does not deal with the law of war.

Mr. Levy provided a brief historical review of the Law of the Sea. In ancient times States established a number of customs as an agreement to use the oceans for commerce and transport. In colonial times there was a kind of generally accepted doctrine based on the principle of the freedom of the high seas. This freedom was only limited in the territorial sea over which the coastal state had full sovereignty, mainly for defensive purposes. With the development of civilization, interdependence amongst states increased substantially and there was a need for a general agreement on the customary practice of the uses of the seas. All attempts to codify globally these customs at the end of the 19th and the beginning of the 20th century failed, according to Mr. Levy.

It was only in 1958 that the First United Nations Conference on the Law of the Sea was convened in Geneva to codify existing customary law. The result was four multilateral conventions containing what can be considered as the classical law of the sea. These conventions did not respond to future needs and were regarded by many states as obsolete the day they were adopted.

The conventions were the following:

1. The Convention on the High Seas: It reiterated the principle of the freedom of the high seas.

2. The Convention on the Territorial Sea: It provided for the national sovereignty over the territorial sea for coastal states, but it failed to define where the territorial sea ended and the high sea began. The extent of that area varied from state to state.

3. The Convention on the Continental Shelf: It granted coastal states jurisdiction over the resources on their Continental Shelf to a depth of 200 metres, or beyond that to the depth of water permitting exploitation. If technology allowed, the continental shelf could be extended and thus the area over which the states executed special rights.

4. The Convention on Fishing: This convention also called for co-operation among states concerning the living resources of the sea.

All these Conventions were generally accepted and they entered into force, being recognized as the Law of the Sea.

Mr. Levy pointed to two major developments in the 1960s, one of them being tremendous progress in the fields of science and technology which opened up new possibilities concerning the uses of the oceans and their resources. Another important development during the 1960s was decolonization, he said. Many former colonies acquired independence and thus enlarged the community of states. As means were developed to explore the oceans beyond the continental shelves and precious minerals were discovered on the deep sea bed, it became necessary to set up regulations for this area that also took into account the interests of the newly founded states. Therefore, in 1967, Ambassador Pardo from Malta urged the United Nations to ensure purely peaceful uses of the sea bed and to hinder the more developed countries from exploiting deep sea resources.

The General Assembly decided to update the 1958 Conventions and also to create international regulations for the future. Mr. Levy explained the fundamental difference between the 1958 Convention, which only codified former existing customary law, and this new approach which was to lead to future-orientated agreements among states.

The Third United Nations Conference on the Law of the Sea was convened in 1973, endorsing a "package deal" approach with no one article to be approved before all others were in place. The success of this Conference, Mr. Levy said, was tied to the fact that it worked on the basis of consensus among the more than 160 member states.

In 1981, the Reagan administration withdrew from the negotiations on the Convention on the Law of the Sea as it did not accept the implications of the concept of the sea bed as being the "common heritage of mankind," meaning that no state could exploit unilaterally the sea bed in the area beyond national jurisdiction. Thus the consensus was broken at the time of the adoption of the Convention. Nevertheless, the Convention was signed by 159 member states and has been ratified by 45.

Mr. Levy noted that the member states that did not sign the Convention can be divided into two major groups: Some Latin-American countries whose constitutions include provisions different from those of the Convention, and a group of industrialized nations which has not signed because they do not agree with the type of international regime set up by the Convention. Among these states are the United States, the United Kingdom and Germany. Apart from the articles of the Convention dealing with the sea bed as the common heritage of mankind, all other articles and annexes have been accepted by all states and have been translated into national jurisdiction.

Mr. Levy pointed out the differing characteristics of the 1958 and the 1982 Conventions on the Law of the Sea. Whereas in the 1958 Convention customary law was codified and thus turned into conventional law, the 1982 Convention has lead to new customary law being established out of conventional law that was not generally accepted. The most important elements of the 1982 Convention that are recognized and executed by all states are, according to Mr. Levy:

- the definition of the territorial sea as an area extending up to 12 nautical miles (126 coastal states, including the United States, have established territorial seas in accordance with the provisions of the Convention)

- the definition of an exclusive economic zone, which extends up to 200 miles over which the state has sovereign rights concerning the exploitation of resources, but not over navigation.(96 states have established this zone, including the U.S.); and

- the continental shelf being limited to 200 miles from shore or according to geological description

A compromise was also found concerning marine scientific research, where the coastal state had to give its approval. This was called the consent regime. The Convention also contains regulations on the protection of the global marine environment, and thus, for the first time, obliges every state to preserve the ecology in the oceans. A system of settlement of dispute was another essential element of the 1982 Convention, including the creation of an International tribunal on the Law of the Sea.

All these regulations are generally accepted by all states and have been translated into practice, being recognized also by international jurisdiction.

In Mr. Levy's opinion, the regulations concerning the common heritage of mankind (the sea-bed and its resources) should be seen in their proper perspective. So far, he said, no state has the technology to exploit resources at the depth of the sea bed, and neither are these resources urgently needed, as there are large supplies of minerals on land.

Along with the adoption of the Convention, a Preparatory Commission was established in order to set up the rules and regulations for an international authority including an international tribunal for the Law of the Sea. The Commission has met twice a year since 1983. This interim international authority monitors sea-bed-exploration undertaken by states that have invested in this field before the Convention enters into force, the so-called "pioneer investors." They must be registered with the Commission under certain conditions in order to gain certain rights for an area of 150,000 square miles. States that have gained the status of a pioneer investor are the USSR, Japan, France and India. China recently applied for this status and will probably be accepted at the next meeting of the Commission, Mr. Levy said.

Addressing the problem of universality of the 1982 Convention, Mr. Levy said that 90 per cent of the Convention's regulations have already been accepted and are recognized as international law. But still, conventional law undoubtedly has a superior status to customary law, which always leaves room for interpretation. The Secretary-General is making every effort to find solutions that will permit the Convention to enter into force as soon as possible and with the widest possible support.